

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

BKY No. 14-60254
Chapter 7

Julie K. Klaphake,

Debtor.

Dean A. Mielke,

Adv. No.: 14-____

Plaintiff,

vs.

ADVERSARY COMPLAINT

Erik Ahlgren, Trustee,

Defendant.

Plaintiff Dean A. Mielke (“**Plaintiff**”) for his Complaint against Defendant Erik Ahlgren, Trustee (“**Trustee**”), states and alleges as follows:

1. Plaintiff is a Minnesota resident who offices at 310 Blattner Drive, Avon, MN 56310.
2. Debtor Julie K. Klaphake (“**Debtor**”) is Plaintiff’s former spouse. Plaintiff and the Debtor were divorced pursuant to a judgment and decree of dissolution, entered respectively on August 5, 2002 and May 12, 2004 (Stearns County Court File F5-00-3338) (the “**Divorce**”).
3. Debtor commenced this Chapter 7 case on April 25, 2014 and the Trustee is the duly-appointed Chapter 7 panel trustee of Debtor’s case.
4. This adversary proceeding is a core proceeding under 28 U.S.C. §157.
5. This Complaint is brought under Bankruptcy Rule 7001(9), and this action arises under 11 U.S.C. §541 and 28 U.S.C. §2201(a). This Court has jurisdiction over this adversary

proceeding, and this adversary proceeding is authorized under 28 U.S.C. §§157 and 1334, Bankruptcy Rule 7001, and Local Rule 1070-1.

6. Plaintiff is in the business of operating gasoline service stations and entered the business with the support and guidance of his father. The first two stations that he operated were located at 406 S. Second Avenue East, Melrose, MN 56352 and 457 Main Street South, Browerville, MN 53648 (collectively, the “**Stations**”).¹ The Stations have sentimental and business value to Plaintiff.

7. As a result of the Divorce, Plaintiff and the Debtor were required to divide their assets and Debtor was awarded the Stations. However, Plaintiff was awarded by court order a right of first refusal (“**ROFR**”) as to the Stations if either were ever sold by the Debtor. The ROFR is memorialized in Stearns County court orders (Exhibit A hereto) and the actual deeds conveying the Stations to Debtor (Exhibit B hereto).

8. More specifically, each ROFR states:

In the event a bona fide written offer to purchase the property is received by Julie K. Klaphake from a third party, Dean A. Mielke shall have the right to match said offer and purchase the property on the same terms and conditions contained therein. Said right of first refusal shall be exercised in a reasonable time and shall be considered waived if not exercised within sixty (60) days of receipt of written notice of said purchase offer by Dean A. Mielke from Julie K. Klaphake. Said right of first refusal shall not apply to property transferred by Julie K. Klaphake to a business entity in which she holds or retains 100% ownership.

9. The Trustee has received a bona fide offer to purchase the Stations from a buyer for the sum of \$1.5 million dollars.

10. Plaintiff has offered to match the bona fide offer received by the Trustee in exercise of his ROFR as to the Stations and the Trustee has refused to honor the ROFR indicating instead that he intends to notice a sale for \$1.5 million dollars.

¹ The Stations are known as Total Express of Melrose, Inc. and Total Express of Browerville, Inc.

11. Counsel for the Trustee indicated on June 5, 2014 that the Trustee did not intend to honor the ROFR as to the \$1.5 million offer received by the Trustee for the Stations.

12. The Trustee stands in the shoes of the Debtor and holds an interest in the Stations pursuant to 11 U.S.C. §541, with all of the same rights held by, and restrictions placed upon, the Debtor.

13. The Trustee's rights and powers are limited to those held by the Debtor at the commencement of the case.

14. Plaintiff's rights as to the Stations pursuant to his ROFR, are not executory in nature and cannot be rejected by the Trustee.

COUNT I: DECLARATORY JUDGMENT

15. Plaintiff restates and realleges the above paragraphs.

16. The Trustee holds an interest in the Stations subject to Plaintiff's ROFR.

17. The Trustee has received a bona fide offer to purchase the Stations for the sum of \$1.5 million dollars.

18. Pursuant to the ROFR placed on each station, by way of deed and court order, Plaintiff is entitled to exercise his right to match the \$1.5 million dollars offer received by the Trustee and to purchase the Stations for the sum of \$1.5 million dollars.

19. As to each Station, the ROFR runs with the land.

20. Plaintiff has properly expressed his desire and intent to exercise his rights as to the Stations.

21. Plaintiff is entitled to a declaratory judgment determining the ROFR on each of the Stations is valid, and not executory in nature subject to rejection by the Trustee, and that Plaintiff is entitled to purchase the Stations from the bankruptcy estate for the sum of \$1.5 million dollars.

COUNT II – INJUNCTIVE RELIEF

22. Plaintiff restates and realleges the above paragraphs.

23. Plaintiff has a unique property interest in the Stations and could not be made whole by money damages if the Trustee were to transfer or otherwise dispose of the Stations.

24. Plaintiff is entitled to relief of this Court pursuant to 11 U.S.C. §105 and Fed. R. Civ. P. 65 (incorporated into this proceeding by Bank. Rule 7065) enjoining the Trustee from disposing of the Stations until such time as the issues addressed in this Complaint are resolved.

25. The Trustee requests that the Court issue a preliminary, and then permanent, injunction barring the Trustee from administering the Stations by way of sale or other transfer to parties other than Plaintiff.

WHEREFORE, Plaintiff seeks this Court's order for the following:

1. Determining that the interest held by the Trustee in the Stations is subject to Plaintiff's right of first refusal;

2. Determining that Plaintiff's rights are not executory in nature and not subject to rejection by the Trustee;

3. Determining that Plaintiff has properly given notice of his intention to exercise his right of first refusal as to each of the Stations;

4. Determining that the Trustee has received a bona fide offer to purchase the Stations for the sum of \$1.5 million dollars and determining that that Trustee must first offer for sale the Stations to Plaintiff for that price;

5. Granting injunctive relief as is appropriate and necessary; and,

6. For such other relief as the Court deems just and equitable.

**LEONARD, O'BRIEN
SPENCER, GALE & SAYRE, LTD.**

Dated: June 10, 2014

By /e/ Matthew R. Burton
Matthew R. Burton, #210018
100 South Fifth Street, Suite 2500
Minneapolis, Minnesota 55402-1216
(612) 332-1030
mburton@losgs.com
Attorneys for Dean A. Mielke

STATE OF MINNESOTA

IN DISTRICT COURT

COUNTY OF STEARNS

SEVENTH JUDICIAL DISTRICT

X JULIE KAY MIELKE,

Court File No: F5-00-3338

Petitioner,

AMENDED

vs.

**SUMMARY REAL ESTATE
DISPOSITION JUDGMENT**

DEAN ALAN MIELKE,

Respondent.

Check here if part or all of the land herein is Torrens ____

Date of Parties' marriage: June 25, 1983

Date of entry of Judgment and Decree of Dissolution: August 5, 2002, May 12, 2004

Name(s) of Petitioner's Attorney(s): John T. Lund, 13 South Seventh Avenue, St. Cloud, MN 56301

Name(s) of Respondent's Attorney(s): Carol Klaphake, 1010 West St. Germain Street, Suite 600, St. Cloud, Minnesota 56301

OR Check here if parties appeared pro se: ____ Petitioner ____ Respondent

Name of Judge who signed Order for Judgment and Decree: Paul Widick

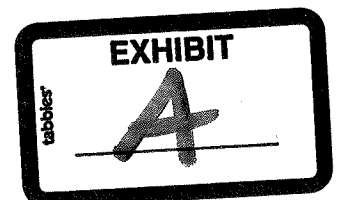
Name of Referee, if any, who signed Order for Judgment and Decree:

The Judgment and Decree resulted from (check one):

____ Stipulation ____ Default with No Appearance X Trial

Appearances at the Default or Trial: Petitioner and Kay Snyder, 803 West St. Germain Street, St. Cloud, Minnesota 56301; and Respondent and Carol Klaphake, 1010 West St. Germain Street, Suite 600, St. Cloud, Minnesota 56301

Name change of parties in Judgment and Decree: (if none check here X)



Petitioner from _____ to _____

Respondent from _____ to _____

THE FOLLOWING ARE THE REAL ESTATE DISPOSITIONS IN THE JUDGMENT AND DECREE:

Legal Description:

Certificate of Title No. _____
(if land is torrens)

Todd County, Minnesota

Lots One (1) and Three (3) and the North 2 feet and South 23 feet of Lot Two (2), Block Twelve, original Townsite of the Village, now City, of Browerville, Minnesota.

Names of persons awarded an interest in the above real estate: Julie Kay Mielke, a/k/a Julie K. Mielke, n/k/a Julie K. Klaphake

Interest awarded: Sole title in fee simple.

Liens, mortgages, encumbrances or other interests in the above real estate created by the Judgment and Decree (include name of persons to whom awarded and interest awarded):

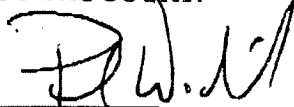
None

Triggering or contingent events set forth in the Judgment and Decree affecting the disposition of the above real estate:

In the event a bona fide written offer to purchase the property is received by the Petitioner from a third party, the Respondent shall have the right to match said offer and purchase the property on the same terms and conditions contained therein. Said right of first refusal shall be exercised in a reasonable time and shall be considered waived if not exercised within 60 days of the receipt of written notice of said purchase offer by the Respondent from the Petitioner. Said right of first refusal shall not apply to property transferred by the Petitioner to a business entity in which Petitioner holds or retains 100% ownership."

Approval of Summary Real Estate Disposition Judgment:

BY THE COURT:


HONORABLE PAUL WIDICK
Judge of the District Court

(space for Approval Stamp
of Referee, if any)

DISTRICT COURT
STEARNS COUNTY, MN
FILED

Date: 10/17


OCT 20 2004 ²

COURT ADMINISTRATOR
BY: 
DEPUTY

STATE OF MINNESOTA
COUNTY OF STEARNS

I hereby certify that I have compared the foregoing papers with the original recorded in my office, consisting of three (3) pages, and that it is a true and correct copy of said original.

Dated: 10-25-04

Court Administrator
By:  Deputy

Date: 10/20/04, 2004.

COURT ADMINISTRATOR

Greg Solien
By: Jana Braet
Deputy

**OFFICE OF COUNTY RECORDER
TODD COUNTY MINNESOTA**

I hereby certify that
this instrument # 430310
was filed/recorded in this office
for record on the 25 day of
October 2004 at 3 am/pm

Cheryl Perish, County Recorder
by: Andrea Gustafson Deputy
19.50 recording fee

_____ well certificate

_____ deed tax/mtg reg tax

Klaphake - 34392 Peach Drive Albany

**OFFICE OF COUNTY AUDITOR/TREASURER
TODD COUNTY MINNESOTA**

☒ No delinquent taxes
☐ Transfer entered

Certificate of Real Estate Value () filed (x) not required.

Certificate of Real Estate Value No. _____

Date 10-25-04

Karen Bush
County Auditor/Treasurer

Joe Rudi
Deputy Auditor/Treasurer

NO DELINQUENT TAXES AND
TRANSFER ENTERED

DATE 3/4/05
AUDITOR Randy R. Schraefel
DEPUTY Sharon Bauer

1145538

05 MAR -4 PM 3:46

COUNTY RECORDER
STEARNS COUNTY, MN
DIANE GRUNDHOEFER

BY AW DEPUTY

STATE OF MINNESOTA

IN DISTRICT COURT

COUNTY OF STEARNS

SEVENTH JUDICIAL DISTRICT

IN RE: The Marriage Of:

CASE TYPE: (4) - DISSOLUTION
WITH CHILDREN

Julie Kay Mielke,
n/k/a Julie Kay Klaphake,

COURT FILE NO. F5-00-3338

Petitioner,

-and-

SUMMARY REAL ESTATE
DISPOSITION JUDGMENT (#2)

Dean Alan Mielke,

Respondent.

Check here if part or all of the land herein is Torrens: _____

Date of parties' marriage: June 25, 1983

Date of entry of Judgment and Decree of Dissolution: February 15, 2002, August 5, 2002, May 12, 2004

Name of Petitioner's attorney: John T. Lund

Name of Respondent's attorney: Carol M. Klaphake

Name of Judge who signed Order for Judgment and Decree: Honorable Paul Widick

The Judgment and Decree resulted from: Trial.

Appearances at the default or trial: Both parties and their respective attorneys.

There was no name change of the parties in the Judgment and Decree.

FW
Gray Plant Mooty

SCR 1 of 3 66.37012.001

THE FOLLOWING ARE THE REAL ESTATE DISPOSITIONS IN THE JUDGMENT AND DECREE:

Legal Description:

Certificate of Title No. _____
(if land is Torrens)

Stearns County, Minnesota

Lot 1, Block One and the West 84 feet of Lot 2, Block One, of Mielke Addition, according to the recorded plat thereof on file and of record in the Office of the County Recorder, Stearns County, Minnesota.

Said property subject to easements of record.

Names of persons awarded an
interest in the above real estate:

Interest Awarded:

Julie Kay Klaphake, f/k/a
Julie Kay Mielke

Fee Simple Title

Liens, mortgages, encumbrances, or other interests in the above real estate created by the Judgment and Decree:

None.

Triggering or contingent events set forth in the Judgment and Decree affecting the disposition of the above parcel of real estate:

In the event a bona fide written offer to purchase the property is received by Julie K. Klaphake from a third party, Dean A. Mielke shall have the right to match said offer and purchase the property on the same terms and conditions contained therein. Said right of first refusal shall be exercised in a reasonable time and shall be considered waived if not exercised within sixty (60) days of the receipt of written notice of said purchase offer by Dean A. Mielke from Julie K. Klaphake. Said right of first refusal shall not apply to property transferred by Julie K. Klaphake to a business entity in which Julie K. Klaphake holds or retains 100% ownership, but shall remain in full force and effect.

Approval of Summary Real Estate Disposition Judgment:

BY THE COURT:

Dated: 2/24/05

Paul Widick
Honorable Paul Widick
Judge of District Court

DISTRICT COURT
STEARNS COUNTY, MN
FILED

FEB 24 2005
Dated:

STATE OF MINNESOTA
COUNTY OF STEARNS

Timothy Roberts
COURT ADMINISTRATOR

Cheryl Bolck
Deputy

BY:

Cheryl Bolck
DEPUTY

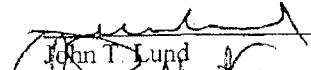
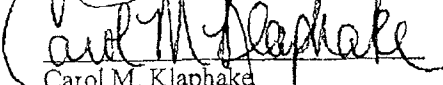
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I hereby certify that the foregoing is a true and correct copy of the original as the same appears in the records of the County of Stearns, Minnesota.
Dated: 2-24-05
Timothy Roberts, Court Administrator

By: Cheryl Bolck Deputy

SCR 2 of 3

APPROVED AS TO FORM AND CONTENT:


John T. Lund

Carol M. Klaphake

QUIT CLAIM DEED Form No. 27-M
Individual(s) to Individual(s) (Top 3 Inches Reserved for Recording Data) Minnesota Uniform
Conveyancing Blanks (1/15/97)

DEED TAX DUE: \$ NONE - Exempt (M.S.A. Sec. 287.22 (N))

Date:

FOR VALUABLE CONSIDERATION, Dean Alan Mielke, an unmarried person

heroby convey(s) and quitclaim(s) to Julie Kay Klaphake, formerly known as Julie Kay Mielke (marital status), Grantor(s),

real property in Todd County, Minnesota, described as follows: Grantee(s),

Lots One (1), Two (2) and Three (3), Block Twelve (12), Town of Browerville, according to the plat and survey thereof, now on file and of record in the office of the County Recorder in and for Todd County, Minnesota.

Parcel No. 30-0017300; 30-0017400; and 30-0017500

This deed is given according to the terms of a decree of dissolution of marriage decree, State of Minnesota, County of Stearns, Court File #F5-00-3338. See reservation attached as addendum.

together with all hereditaments and appurtenances.

Check box if applicable:

- ☐ The Seller certifies that the Seller does not know of any wells on the described real property.
☐ A well disclosure certificate accompanies this document.
☐ I am familiar with the property described in this instrument and I certify that the status and number of wells on the described real property have not changed since the last previously filed well disclosure certificate.

DEAN ALAN MIELKE

Affix Deed Tax Stamp Here

STATE OF MINNESOTA

COUNTY OF STEARNS

ss.

This instrument was acknowledged before me on April 12, 2005, by Dean Alan Mielke (Date)

NOTARY PUBLIC

EMBER LEIGH TAMM
NOTARY PUBLIC - MINNESOTA
My Commission Expires Jan. 31, 2009

THIS INSTRUMENT WAS DRAFTED BY (NAME & ADDRESS):
LUND KAIN & SCOTT P.A.
13 South Seventh Avenue
Saint Cloud MN 56301

SIGNATURE OF NOTARY PUBLIC OR OTHER OFFICIAL

Check here if part or all of the land is Registered (Torrens) ☐

Tax Statements for the real property described in this instrument should be sent to (include name and address of Grantee):

Julie Kay Klaphake
34392 Peach Drive
Albany MN 56307

Well Certificate Received

Well Certificate not Required

EXHIBIT

B

**OFFICE OF COUNTY AUDITOR/TREASURER
TODD COUNTY MINNESOTA**

☒ No delinquent taxes
☒ Transfer entered
Certificate of Real Estate Value () filed (☒ not required).
Certificate of Real Estate Value No. _____
Date 4-18-05
Loren Busch
County Auditor/Treasurer
[Signature]
Deputy Auditor/Treasurer

**OFFICE OF COUNTY RECORDER
TODD COUNTY MINNESOTA**

I hereby certify that
this instrument # **433659**
was filed/recorded in this office
for record on the 18th day of
April 2005 at 2 am/pm
Cheryl Perish, County Recorder
by: [Signature] Deputy
29.50 recording fee
_____ well certificate
_____ deed tax/mtg reg tax

Wullenbring et al

ADDENDUM TO DEED

In the event a bona fide written offer to purchase the property is received by Julie K. Klaphake from a third party, Dean A. Mielke shall have the right to match said offer and purchase the property on the same terms and conditions contained therein. Said right of first refusal shall be exercised in a reasonable time and shall be considered waived if not exercised within sixty (60) days of the receipt of written notice of said purchase offer by Dean A. Mielke from Julie K. Klaphake. Said right of first refusal shall not apply to property transferred by Julie K. Klaphake to a business entity in which she holds or retains 100% ownership.

Date 2/24/05 Document Page 15 of 16

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05 FEB 24 AM 8:28

Randy R. Schiefel
County Auditor
By Brenda Stenger Deputy

COUNTY RECORDER
STEARNS COUNTY, MN
DIANE GRUNDHOEFER

BY DCM DEPUTY

66.37012.001

WARRANTY DEED
Corporation, Partnership or
Limited Liability Company to Individual(s) (Top 3 inches Reserved for Recording Data)

Minnesota Uniform
Conveyancing Blanks (6/17/97)

DEED TAX DUE: \$ 1.65
Date: February 23, 2005
FOR VALUABLE CONSIDERATION, Petro Plus, Inc.

a corporation
Grantor, hereby conveys and warrants to Julie K. Klaphake
under the laws of the State of Minnesota
real property in Stearns County, Minnesota, described as follows: Grantee,

Lot 1, Block One and the West 84 feet of Lot 2, Block One, of Merle Addition, according to the recorded plat thereof on file and of record in the Office of the County Recorder, Stearns County, Minnesota.

Said property subject to easements of record.
the total consideration for this transaction is \$500.00 or less.

together with all hereditaments and appurtenances belonging thereto, subject to the following exceptions:

Check box if applicable:

- ☐ The Seller certifies that the Seller does not know of any wells on the described real property.
☐ A well disclosure certificate accompanies this document.
☒ I am familiar with the property described in this instrument and I certify that the status and number of wells on the described real property have not changed since the last previously filed well disclosure certificate.

Affix Deed Tax Stamp Here

Julie K. Klaphake
By Julie K. Klaphake
Its President

By _____
Its _____

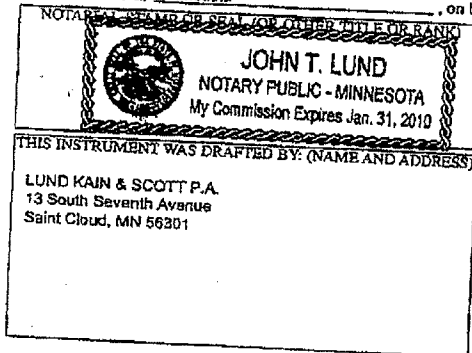
STATE OF MINNESOTA

COUNTY OF STEARNS

This instrument was acknowledged before me on

223-05

by Julie K. Klaphake and _____ (Date)
the President and _____
of Petro Plus, Inc. and _____
under the laws of Minnesota a corporation
on behalf of the corporation



[Signature]
SIGNATURE OF NOTARY PUBLIC OR OTHER OFFICIAL
Check here if part or all of the land is Registered (Torrens) ☐

Tax Statements for the real property described in this instrument
should be sent to (Include name and address of Grantee):

Julie Kay Klaphake
34392 Peach Drive
Albany, MN 56307

SCR 1 of 2

ADDENDUM TO DEED

In the event a bona fide written offer to purchase the property is received by Julie K. Klaphake from a third party, Dean A. Mielke shall have the right to match said offer and purchase the property on the same terms and conditions contained therein. Said right of first refusal shall be exercised in a reasonable time and shall be considered waived if not exercised within sixty (60) days of the receipt of written notice of said purchase offer by Dean A. Mielke from Julie K. Klaphake. Said right of first refusal shall not apply to property transferred by Julie K. Klaphake to a business entity in which she holds or retains 100% ownership.

16 TRES08
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P A I D

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